

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF NEW YORK

3 - - - - - X

4 UNITED STATES OF AMERICA, : 09 CR 591

5 :

6 -against-

7 :

United States Courthouse
Brooklyn, New York

8 DUDLEY JERRICK, :

9 Defendant. : July 27, 2010
10 : 3:00 o'clock p.m.

11 - - - - - X

12 TRANSCRIPT OF CONFERENCE
13 BEFORE THE HONORABLE JOHN GLEESON
14 UNITED STATES DISTRICT JUDGE

15 APPEARANCES:

16 For the Government: LORETTA E. LYNCH
United States Attorney
17 BY: ALLON LIFSHITZ
Assistant United States Attorney
18 271 Cadman Plaza East
Brooklyn, New York

19
20 For the Defendant: KANNAN SUNDARAM, ESQ.
Federal Defenders

21
22 Court Reporter: Gene Rudolph
225 Cadman Plaza East
23 Brooklyn, New York
24 (718) 613-2538

25 Proceedings recorded by mechanical stenography, transcript
produced by computer-aided transcription.

1 THE COURT: Okay. State your appearances, please.

2 MR. LIFSHITZ: Allon Lifshitz for the United States.

3 Good afternoon, Your Honor.

4 THE COURT: Good afternoon.

5 MR. SUNDARAM: Kannan Sundaram, Federal Defenders,
6 for Mr. Jerrick.

7 Good afternoon.

8 THE COURT: Good afternoon.

9 All right. I have your submissions on this
10 disclosure issue. I was hoping we could maybe get down to
11 brass tax and find out exactly to the extent you can tell us
12 what you are looking for. They are coming down, I don't have
13 my papers in front of me at the moment.

14 To some extent your discovery requests have great
15 breadth to them. It might cause the government, if granted,
16 to have to go back and find every case in which a courier said
17 they didn't know there were drugs. I am not about to do that.

18 On the other hand, I do recall, I think maybe all of
19 us, if we don't recall them, we are familiar with cases in
20 this district in which -- courier cases in this district where
21 other events caused legitimate defenses to be raised. I
22 recall in particular when the airline, corrupt airline
23 employees were prosecuted, many of them in my courtroom, and
24 threw a monkey wrench in some of the prosecutions of other
25 couriers who claimed that at the same time their luggage was

1 discovered to contain cocaine, and unbeknownst to them, they
2 alleged. There were tricky disclosure issues.

3 So I don't want this to be a fishing expedition and
4 we have a trial coming up on Monday, right?

5 MR. SUNDARAM: Correct.

6 MR. LIFSHITZ: Yes, Your Honor.

7 THE COURT: Are there other cases involving the use
8 of coffee cans to smuggle drugs in the luggage of people who
9 turned out to be dupes? Are there cases like that in your
10 office or have there been recently?

11 MR. LIFSHITZ: I am not aware of any, Your Honor.
12 But I am not prepared to say there have not been as a blanket
13 matter.

14 THE COURT: Could you find out? Even if you don't
15 think you should disclose it, then you can tell me.

16 MR. LIFSHITZ: Okay.

17 THE COURT: Is there any -- extrinsic to this case
18 and to any allegations that have been made or might be made by
19 Mr. Jerrick, is there any evidence of corruption among the
20 airline employees of this airline? I don't even know which
21 one it is from which this defendant got off a plane? But any
22 corruption among airline employees of this airline at about
23 the same period of time? Anything remotely along the lines of
24 using passengers as unwitting dupes?

25 Do you understand what I mean by that? That was the

1 gist of the line of cases I had.

2 MR. LIFSHITZ: Yes, Your Honor.

3 THE COURT: What airline was it?

4 MR. LIFSHITZ: Caribbean Airlines.

5 THE COURT: Obviously, if there is a bunch of
6 employees of Caribbean Airlines who at the same time
7 Mr. Jerrick came in who, according to the government or the
8 agencies, were planting -- to get drugs through Customs were
9 putting them in the luggage of unwitting passengers, I think I
10 would make you disclose all of that.

11 Is there anything like that?

12 MR. LIFSHITZ: Not that I am aware of. I will ask.

13 THE COURT: Can you make that inquiry?

14 MR. LIFSHITZ: Yes.

15 THE COURT: Beyond those kind of targeted requests,
16 could you tell me what, if anything, you think you have a
17 right to require the government to get.

18 MR. SUNDARAM: Yes, Your Honor.

19 First, on the subject of the -- what --

20 THE COURT: I'm sorry? Forgive me. I should have
21 mentioned this at the outset.

22 This discovery request has reached a head only
23 recently and I was asked today by defense counsel to convene
24 an immediate status conference, which I did. The defendant is
25 not here. The record ought to reflect that. I don't think he

1 needs to be here. This is a legal issue for which his
2 presence is not required in my judgment.

3 Do you see it any differently?

4 MR. SUNDARAM: No, Your Honor.

5 In light of the fact that I did request an immediate
6 status conference, and I was prepared to waive my client's
7 appearance, I didn't even contact him and, to be honest, I
8 wasn't -- I thought maybe it would be tomorrow. I wasn't
9 anticipating that it would be granted so literally.

10 THE COURT: In your judgment, is his presence
11 required under the rule?

12 MR. SUNDARAM: No, Your Honor.

13 THE COURT: All right. Go ahead.

14 MR. SUNDARAM: I would like to start responding to
15 the question by focusing on what I think Your Honor referred
16 to as the targeted type of cases. Now, first, I did -- I did
17 include in my initial discovery letter a case, United States
18 versus against Singh. That's a case that I am aware of
19 because it came out of our office in 2003, 2004. It was in
20 our view -- that case was dismissed. In our view, that case
21 was somehow related to the Kennedy cases that Your Honor is
22 referring to, which I also mentioned the citation, at least
23 the case name, United States against Weatherly and Adams and
24 our contention is that Singh was a passenger on another
25 airline who -- whose flight came in the same day and was -- in

1 our view, was the victim of misplaced luggage that was
2 supposed to be -- supposed to be on -- with another passenger.
3 I'm sorry. Had his name on it but it was -- it was -- the --
4 the defendants in Weatherly -- Weatherly and the -- and his
5 codefendants were being separately prosecuted at the same
6 time.

7 We also -- and there was a -- a bunch of litigation
8 in front of Judge Amon. I'm sorry for mispronouncing the
9 name.

10 THE COURT: That's okay.

11 MR. SUNDARAM: And --

12 THE COURT: There are a number of times I have
13 mispronounced yours. You've got a voucher of mispronounced
14 names in here for about a month.

15 MR. SUNDARAM: Okay. I will collect on that later.

16 In any event, in that case, this prosecutor's office
17 ended up dismissing the case and, as is the case with
18 dismissed cases, there is no public statement by them as to
19 reason they dismissed it. As an example, we would be asking
20 for -- for the files or at least for them to -- for the
21 government to produce their papers in that case.

22 THE COURT: In the Singh case?

23 MR. SUNDARAM: For your review in the Singh case.

24 THE COURT: In 2003?

25 MR. SUNDARAM: Yes.

1 THE COURT: Denied.

2 MR. SUNDARAM: As well, there could be -- there are
3 cases -- it -- I don't think it's -- I understand in terms of
4 the breadth this could be characterized arguably as a fishing
5 expedition of sorts. But in terms of -- by its very nature,
6 we are asking for information that we don't have, that the
7 government may have, which I know you touched upon when you
8 asked Mr. Lifshitz to inquire.

9 For example, there are cases, Singh was a case that
10 was prosecuted and then dismissed. We are asking for cases
11 along those lines where unwitting passengers -- cases
12 involving unwitting passengers were not prosecuted, anything
13 within the knowledge of the US Attorney's Office that were
14 maybe dismissed earlier or not prosecuted.

15 THE COURT: You want the files for all people in
16 whose luggage drugs were found and they claim to be -- to lack
17 knowledge and they weren't prosecuted?

18 MR. SUNDARAM: Well, yes.

19 We are -- I mean -- yes, our request is for
20 documents or at least information relating to those cases.
21 Not necessarily the entire file. We are not necessarily
22 asking for the files but I am -- we are asking at -- at its
23 core our request is for information.

24 In Stever this was -- this was sought by the defense
25 under Rule 16 and also under Brady. The Court's decisions, in

1 Stever, which I agree, it's a Ninth Circuit case, but it's
2 very recent, the Court did not decide it under Brady. They
3 decided it under Rule 16 and then the constitutional right to
4 present defense.

5 But my -- our requests were essentially the same.
6 They were worded very similarly and then I made some more
7 particulars based on information we know.

8 But the -- otherwise, our requests were the -- you
9 know, they tracked the same language in terms of requesting
10 reports and documents that the government knows of describing
11 the modus operandi and the characteristics and we are talking
12 of organizations that traffic drugs through Guyana.

13 I have -- I mean, we have done some of our own
14 investigation to, you know, in terms of State Department
15 bulletins, reports of that nature. We don't have access to
16 necessarily the actual training materials that special agents,
17 ICE agents and DEA agents might receive.

18 THE COURT: Let me interrupt you. Sorry.

19 I know you are not -- I believe you are not doing a
20 fishing expedition. You are trying to represent your client.
21 But this needs to be more targeted, in my respectful opinion.

22 You ask for all documents regarding drug trafficking
23 organizations that import drugs from Guyana. I would never
24 order that in 100 years. People could get killed and there is
25 not even any effort to tie it in to a defense in this case.

1 Do you mean, the use of unwitting dupes in Guyana at
2 or about the time your client was arrested? Or do you really
3 mean that? I would never do that. I don't think there is a
4 judge in the world that would grant that request responsibly.

5 MR. SUNDARAM: I -- I can --

6 THE COURT: It is not even limited in time. A 1950s
7 file about Guyanese drug traffickers would have to be
8 disclosed to you?

9 MR. SUNDARAM: That -- I wouldn't advocate that.

10 THE COURT: You have asked for it thought. Now you
11 are doing the advocating.

12 Tell me what you are advocating for that is a little
13 more targeted than this.

14 MR. SUNDARAM: Our defense, which I think -- which
15 I -- I think the government made a point that Stever is
16 inapposite, even if the Court were to otherwise be inclined to
17 agree with that decision of another circuit, that Stever
18 inapposite because in that case the -- the request put out the
19 defense. I don't think -- that certainly isn't apparent to me
20 from the decision in Stever.

21 In any event --

22 THE COURT: Do you think I would be less mystified
23 by this if I knew your defense?

24 MR. SUNDARAM: I can tell you based on what --

25 THE COURT: I am not telling you to tell me your

1 defense.

2 Do you think it would help me if I knew your
3 defense?

4 MR. SUNDARAM: Judge, if I set forth an example of a
5 potential defense, it might --

6 THE COURT: Okay.

7 MR. SUNDARAM: It might help me answer your question
8 about targeting this request regarding information about drug
9 trafficking organizations that really I should have -- I meant
10 to say the -- that traffic through Guyana because Guyana,
11 based on the research that I have done, and I think it's
12 somewhat well-known, is considered a transshipment country as
13 opposed to a source country. The source country is usually
14 Colombia or another South American country.

15 Guyana, according to various State Department
16 bulletins, has been -- I think to some extent this was
17 supported by some of the discovery that was given to us
18 regarding the expert that the government initially intended to
19 use, Timothy Varian. This is in his own testimony from prior
20 cases, that Guyana is a target country by drug trafficking
21 organizations to use as a transshipment country because of the
22 high incidence of corruption and lack of security and
23 political issues that exist in Guyana and this -- I understand
24 I didn't focus on any particular year but I think the reports
25 that I have read are fairly recent, as in 2009, 2008.

1 The Kennedy case which involved corrupt baggage
2 handlers in Guyana working in unison with corrupt baggage
3 handlers at the Kennedy Airport involved employees of
4 Guyanese -- of an airline that flew out of Guyana and baggage
5 handlers that were in Guyana that are --

6 THE COURT: That's the 2003 case?

7 MR. SUNDARAM: Yes.

8 Even if the request would just focus on the last
9 five to seven years, we are talking about from that time --

10 THE COURT: All documents in the government's
11 possession regarding drug trafficking organizations that
12 imported through Guyana in the last five or seven years?

13 MR. SUNDARAM: What I am asking -- I am asking for
14 and what I should have asked for, to make this more focused
15 and precise, is information -- is training, is what the --
16 what information -- which is included in here but I didn't
17 limit it, the officer training materials, the -- what the
18 government teaches its own agents about -- about drug
19 trafficking through Guyana, through the airport.

20 THE COURT: Which government did you have in mind?
21 Our government or the Guyanese government?

22 MR. SUNDARAM: Our government.

23 I am talking -- I am not asking the Eastern District
24 US Attorney's Office to go outside of its own office
25 necessarily but I am talking about the training materials that

1 they -- that ICE, the DEA give their own agents in terms
2 of -- in terms of what to look for in intercepting drug
3 shipments --

4 THE COURT: Okay.

5 MR. SUNDARAM: -- through Guyana. I think where
6 that ties in is because of the -- the level of corruption and
7 the ease with which people other than -- either corrupt
8 airline employees and just people in general, how easy it is
9 to get access to somebody's luggage in Guyana. That would be
10 how I think it is relevant, may be relevant to our defense.

11 My client's statements to the agents in this case
12 were, as I think the Court is aware from some of the
13 papers -- from the litigation that we have -- that's already
14 been in front of you regarding the -- what parts of the
15 statements should and shouldn't come in, from the beginning he
16 said I -- I don't know -- he said this is my -- this is my
17 luggage. I bought these. I didn't know what was inside them.

18 Among the -- among what we have unearthed through
19 newspaper articles, which have been fairly recent and common,
20 they are -- I am not saying they are all necessarily focused
21 on Guyana, is that there is a surprisingly high incidence of
22 drugs, it seems like usually cocaine, turning up in places
23 where -- which suggest that it has been somehow lost
24 from -- it was being smuggled and it ended up being lost by
25 the smugglers. They lost track of it.

1 Similar to what happened in the JFK case with
2 luggage. We are talking about cocaine shipments that end up
3 in food products and they find them at the supermarket and the
4 supermarket is not involved. Or at least isn't -- nobody
5 believes that they had anything to do with it.

6 Certainly if there are cases that the US Attorney's
7 Office knows about that for one reason or another they decided
8 not to charge anybody with, I think that --

9 THE COURT: Now I understand better. Your defense
10 may be that he bought these and because of lax security in
11 Guyana, bad guys misplaced it, didn't necessarily intend to
12 have it end up in the luggage of Mr. Jerrick but had access to
13 the luggage because of the lax security and through some snafu
14 these drugs ended up in Jerrick's powdered milk. Something
15 like that?

16 MR. SUNDARAM: There are a few different possible
17 variations. But in the end, what they all have in common is a
18 defense of lack of knowledge, and -- and a defense that our
19 client didn't have -- wouldn't have knowledge of exactly how
20 it happened but as his lawyers we should be able to not only
21 argue certain possible basis for reasonable doubt, but to
22 buttress those with some information that this isn't as
23 implausible as it otherwise might seem.

24 THE COURT: Right. You just are talking about
25 disclosure now and that's what we will address.

1 We are going to have some admissibility issues.
2 Even if the training manual, for example, said watch out for
3 these guys coming through Guyana because they -- because the
4 security is lax and drugs can wind up in the wrong suitcase,
5 you are going to have an admissibility issue.

6 You will fight that battle if and when you get to
7 it, right?

8 MR. SUNDARAM: There is also the -- the fact that
9 until -- you know, there is an element of the unknown here.
10 Whether or not it's considered a fishing expedition, we don't
11 know exactly what the government may have and what they may
12 turn over and I think some of the admissibility issues may
13 depend on what it is exactly and, you know, say there may be a
14 difference between say reports and bulletins versus
15 information that the government uncovers in a particular case.

16 THE COURT: Okay. You would like, in terms of
17 concrete requests, you would like the training manual for the
18 drug interdiction people to the extent it addresses drug
19 traffic through Guyana.

20 MR. SUNDARAM: Yes.

21 THE COURT: Okay. What else?

22 MR. SUNDARAM: Back to I think the first topic that
23 we were discussing, the milk powder cans. Although --
24 although if Your Honor were to expand -- expand that to
25 include coffee cans we --

1 THE COURT: Did I say coffee cans before?

2 MR. SUNDARAM: You did.

3 THE COURT: What was it here? Milk powder cans?

4 MR. LIFSHITZ: Exactly.

5 THE COURT: You would like me to expand that to
6 include cans containing other products?

7 MR. SUNDARAM: I thought --

8 THE COURT: Will you make such an inquiry?

9 MR. LIFSHITZ: I will, Your Honor, yes.

10 THE COURT: If I did, then I reiterate it.

11 MR. SUNDARAM: And with respect to the second thing
12 that Your Honor said regarding an inquiry of the prosecutor's
13 office about corruption among airline employees --

14 THE COURT: That should probably be airport
15 employees.

16 What were you going to say?

17 MR. SUNDARAM: I -- I would -- I would ask that not
18 necessarily be limited to Caribbean Airlines, which is the
19 airline that my client traveled on but other airlines that fly
20 from out of that airport and I believe in the Weatherly-Adams
21 case, which is the JFK case that Your Honor was referring to
22 earlier, there was more than one airlines involved. I think
23 there was Northwest Airlines and there was another airlines.

24 I can speak further with Doug Morris, the lawyer
25 involved in the Singh case. I believe that there may have

1 been a situation where it actually -- the bag actually was
2 from one flight with one airlines and ended up on a passenger
3 in a different flight. That's because the baggage handlers
4 were involved.

5 THE COURT: Do you mean corruption that
6 includes -- your point about not limiting it to a particular
7 airlines strikes me as making all the sense in the world but
8 it strikes me that what I ought to ask the prosecutor to do is
9 ask around to see if there is any evidence in the government's
10 hands of corruption of airport employees around this period of
11 time, not just any old corruption but corruption that involves
12 the use of the baggage of unknowing travellers to conceal
13 drugs. Right? Otherwise, what, he has to go make sure people
14 didn't pad their expense accounts and stuff like that?

15 Do you agree with that?

16 MR. SUNDARAM: Yes.

17 THE COURT: Or do you think any old corruption ought
18 to be embraced in this?

19 MR. SUNDARAM: I am not against an overbroad --

20 THE COURT: I am speaking rhetorically. I am going
21 to limit it no matter what your position is.

22 MR. LIFSHITZ: May I speak briefly, Your Honor?

23 THE COURT: Yes. I am going to let you speak to all
24 of this. I just want to get a laundry list first.

25 MR. LIFSHITZ: Sure.

1 THE COURT: Anything else in terms of targeting your
2 request?

3 MR. SUNDARAM: Yes.

4 With respect to the -- to our -- I am quoting from
5 our original discovery letter. I asked for any incidents in
6 which food product containers to be shipped from or through
7 Guyana have reportedly been opened or inspected by Guyana law
8 enforcement agents.

9 I didn't mean -- I don't mean by that request that
10 they have to have information -- that they have to go to
11 Guyana or -- that's -- that that request means anything in
12 their knowledge from cases where they learn that that's
13 happened.

14 THE COURT: About food products being opened in
15 Guyana?

16 MR. SUNDARAM: Yes, cases in which to their
17 knowledge that has happened or at least -- an incident of how
18 often that's happened.

19 THE COURT: Okay. What else?

20 MR. SUNDARAM: I think that -- I think it is fair to
21 say that although I know you -- the Court hasn't actually made
22 a final ruling, you will hear from the government, but in
23 terms of what Your Honor is contemplating at this point, I
24 believe you've already covered the last two requests, which
25 are instances in which drugs -- and when I say allegedly have

1 been smuggled from Guyana by utilizing baggage handlers or
2 other airport -- or airlines personnel, I -- that would
3 include cases in which the government has information tending
4 to support such a claim and --

5 THE COURT: So every single case in which a courier
6 claimed --

7 MR. SUNDARAM: No. I am saying, in which -- in
8 which the government has either dismissed a case where such a
9 claim has been made or has otherwise acknowledged the validity
10 of such a claim, anything supporting that.

11 And if -- and I think it -- I would also ask that if
12 the prosecutor has a question in his own mind that -- about
13 whether -- because one of the problems is, like in the Singh
14 case, when there is a dismissal it doesn't necessarily come
15 with an explanation.

16 THE COURT: Right. They are not required to
17 explain.

18 MR. SUNDARAM: Exactly.

19 THE COURT: What cabins the principle you rely on?
20 It is often the case that prosecutors exercise their
21 discretion not to prosecute someone who says they didn't do
22 it. It happens across all range of offenses.

23 MR. SUNDARAM: Which is why I am not -- I haven't
24 been asking for every case in which they decide not to
25 prosecute with someone charged with smuggling drugs. I am

1 asking for cases in which that defense has been raised or that
2 claim has been made or they have information in their files
3 supporting the conclusion that that's what happened, that you
4 had a -- an unwitting passenger and that specific -- that
5 specific reason for dismissing a case, not just, you know, any
6 case in which they have chosen not to prosecute or dismiss.

7 THE COURT: What justifies my -- that's an extremely
8 labor intensive task. What rule of disclosure justifies that?

9 If three years ago there was a courier case
10 dismissed, you want me to require Mr. Lifshitz to go past the
11 fact that it was dismissed, speak to people to see if it was
12 dismissed not because of resource allocation issues but
13 because of a genuine belief on the part of some prosecutor or
14 some agent that the person might actually be innocent? That's
15 what you want, that stuff?

16 MR. SUNDARAM: Where the person might be innocent on
17 the ground, you know, based on a -- this unwitting passenger
18 defense.

19 THE COURT: Right. Describe for me a scenario in
20 which that would ever come to the attention of the jury in
21 this case. If three years ago or ten days ago someone else
22 decided with regard to some other case that the mens rea was
23 either absent or couldn't sufficiently be proved beyond a
24 reasonable doubt, why would that go to a jury?

25 MR. SUNDARAM: Again, it's not -- I am not talking

1 about any case in which the person lacked -- well, I don't
2 know if this is what Your Honor is talking about when you say
3 absence of mens rea. I am talking about cases in
4 which -- I -- I think that what you are hitting upon is in one
5 aspect relevance.

6 THE COURT: Yes.

7 MR. SUNDARAM: Our position, and for this we
8 did -- we do rely heavily on Stever and --

9 THE COURT: Forget Stever for a second. I have read
10 Stever. Let's talk about this case.

11 MR. SUNDARAM: The argument is the reason the jury
12 should -- that is a legitimate -- that is something a jury
13 should learn about in terms of relevance is because even
14 if -- even if it happened a couple of years ago, the
15 defense -- when you have a defense in this case, that -- we
16 start with the prosecution. What they have in this
17 case -- their theory is essentially that this person knew what
18 he possessed because people always know what they possess.
19 They don't have any admission from him. I am not sure what
20 other evidence they may have or try to argue shows that. But
21 that's -- in this case is basically possession and you know
22 what's in your suitcase and you know what's in the container
23 in your suitcase.

24 Our position is that when we are -- if we are going
25 to, you know, be left to argue to the jury that, you know, he

1 didn't necessarily know and you shouldn't assume that somebody
2 knows, in this case you shouldn't, I believe that we should be
3 allowed to get in front of the jury and part of this is based
4 on our constitutional right to present a defense, even if the
5 Rules of Evidence don't support us but I think they do because
6 I think that in a case where you are trying to argue something
7 to a jury that may otherwise just seem implausible, I think it
8 does make it more likely than otherwise it would be for that
9 to have been the case if -- if we are able to present to the
10 jury evidence that this actually -- this seemingly implausible
11 thing has actually happened before or does happen.

12 THE COURT: Because Mr. Lifshitz or one of his
13 colleagues chose a couple of years ago to dismiss a case
14 against someone whose luggage contained cocaine, that makes it
15 more probable, makes it more likely that your client didn't
16 know there was cocaine in the cans?

17 MR. SUNDARAM: Well, what -- what makes it more
18 likely than it would be without the evidence is the
19 proposition which is a basis for reasonable doubt that just
20 because it was in his -- it was in his luggage and it was
21 inside those unopened cans, that doesn't mean that -- you
22 know, whenever that happens, the person knew what was in it.
23 It is a challenge --

24 THE COURT: Jurors know that. I think you are
25 underestimating jurors.

1 I don't think there is any probative value in it.
2 Even if there were, then I imagine the government would want
3 to distinguish that case from this one and then I'd end up
4 trying both. I am not going down this road.

5 MR. SUNDARAM: This is at this point a discovery
6 request and -- and so I would ask that Your Honor reserve
7 judgment in terms -- to see what -- this may not -- I don't
8 think this is necessarily -- I don't envision this necessarily
9 being -- bringing out all the facts of that case and comparing
10 it to this case.

11 THE COURT: I understand your application.

12 What else?

13 It is denied, before I forget.

14 I am not going to require the government to do that.
15 I don't think there is a ground for me to do so in the
16 disclosure rules or statutes or the constitutional disclosure
17 requirements.

18 (Pause.)

19 MR. SUNDARAM: My -- my related request is for
20 information within the government's possession of other
21 instances in which -- in which -- in which narcotics have been
22 found in -- in the stream of commerce, as in a supermarket.
23 Because -- because one possible -- one possible defense in
24 this case is that -- is not that there was some corruption by
25 airline employees but that there was actually cocaine in the

1 first place at the supermarket -- I'm sorry -- where
2 the -- where the milk powder was purchased.

3 THE COURT: So you want them to find out where drugs
4 were found in a supermarket?

5 MR. SUNDARAM: I want them to disclose cases that
6 they have within their -- within their knowledge
7 where -- again, this -- we are talking about cases that may
8 have ended up not being -- cases that may have ended up being
9 dismissed, where the claim is similar to the claim my client
10 made in this case to the government, which is that he
11 bought -- he bought something that was not -- you know, food
12 product and it turned out to have cocaine and I am talking
13 about cases where it was at the place where he bought it.

14 THE COURT: At the place where he bought it?

15 MR. SUNDARAM: I'm sorry. Your Honor was focusing
16 on the unwitting passenger.

17 THE COURT: Right.

18 MR. SUNDARAM: I'm asking for the same types of
19 cases which involve an unwitting consumer within the
20 government's knowledge.

21 THE COURT: So --

22 MR. SUNDARAM: That person is just as innocent
23 as -- has the same lack of a culpable mental state as an
24 unwitting passenger.

25 THE COURT: People who bought supermarket products

1 and it turns out there were drugs in it?

2 MR. SUNDARAM: Yes.

3 THE COURT: All right. Denied.

4 Anything else?

5 MR. SUNDARAM: No.

6 THE COURT: I will hear from Mr. Lifshitz. You
7 wanted to be heard, Mr. Lifshitz.

8 MR. LIFSHITZ: Yes. Thank you, Judge.

9 I will try to be brief.

10 We have heard now, it is undisputed, that in this
11 case the drugs were not found just in the suitcases in some
12 false bottom or somewhere where they could be snuck in but in
13 cans that the defendant admitted right away he bought and he
14 had a receipt in his pocket for them. So the fact that there
15 might be other cases where someone like a corrupt airport
16 employee smuggled drugs through someone's suitcase has no
17 relevance to this case because there is no reason someone
18 wanting to use a dupe would put drugs within cans that would
19 require displacing the milk powder and, I suppose on the
20 New York side of the trip, taking the cans and drawing the
21 passenger's attention to this conspiracy.

22 I think even the narrow category of cases where a
23 corrupt baggage handler smuggled drugs through someone's
24 suitcase is completely irrelevant to this case.

25 We have heard about potential defenses ranging from

1 the corrupt baggage handlers to, I guess the last one was, the
2 cocaine was already in the cans when he bought them in the
3 supermarket market. That's exactly why these requests don't
4 state a prima facie case. A potential defense or a request
5 for material that may be relevant to the defense just isn't
6 good enough. There are cases I cite on page 17 of the brief
7 that say that.

8 If he doesn't know what his defense is -- he has no
9 obligation to say here in open court what his defense
10 is -- but if he wants a wide range of material, he is
11 obligated to explain why it is relevant to his defense in this
12 case.

13 Training material from ICE and the DEA was
14 mentioned. Those are separate agencies. I will, of course,
15 do whatever the Court directs. I don't know that ICE and the
16 DEA would be willing to give me training material. It is
17 generally distributed to law enforcement officers.

18 If they do, as has been suggested, I can't imagine
19 how that would be admissible if people are generally
20 instructed that drugs are smuggled from Guyana. I don't know
21 that would be in the material. But something like that, I
22 don't know who would get that in or why it would be allowed to
23 go to a jury.

24 The same thing for instances in which Guyanese law
25 enforcement opened food containers. They could do that for

1 any number of reasons. Importing food is a separate issue
2 from whether there are drugs in them. There are probably food
3 containers opened every day in every international airport in
4 the world. That strikes me as a huge fishing expedition.

5 I believe that's all.

6 Other than to the extent the Court orders me to make
7 inquiries, I would just like to make clear what the inquiries
8 are and I will state a proposal for how I will do that just so
9 we are all on the same page.

10 THE COURT: Okay.

11 MR. LIFSHITZ: I don't think any inquiries along the
12 lines the defense requests are appropriate, however.

13 THE COURT: Thank you, Mr. Lifshitz.

14 Anything further?

15 MR. SUNDARAM: Yes, Your Honor.

16 I think -- I just think that what Mr. -- the
17 arguments Mr. Lifshitz is making directed towards relevance
18 are arguments that could be made to the jury and don't
19 make -- don't make something not relevant. I think
20 what -- his arguments would make -- they are arguments that go
21 to the weight of that evidence, not it's admissibility.

22 And with respect to the opening of the packages, it
23 is -- in this case, the government is alleging that my client
24 bought milk powder at the store in Guyana and then himself
25 opened it and replaced it with cocaine. I believe. Or -- or

1 in conjunction with somebody else who was supplying it to him.

2 I think that it should be fair game for, you know,
3 for us to explore at least for discovery purposes instances
4 within the government's knowledge where food products have
5 been opened by other people who had access to that -- other
6 than the passenger or the consumer.

7 THE COURT: Okay. Thank you both.

8 I do think it gets slippery, arguing about the
9 merits of a prospective defense and whether someone is
10 entitled to raise it. I think I heard probably every
11 plausible and even some implausible arguments associated with
12 containers found in the luggage of couriers. You can't hang
13 around these courtrooms for as long as I have without having
14 heard them all.

15 I am going to grant the application but only in
16 part. To the extent I don't grant it, I am going to deny it.

17 I am going to ask Mr. Lifshitz to make inquiry.
18 This seizure here was July -- your brief says July 25, 2010.
19 I assume it's 2009.

20 MR. LIFSHITZ: 2009, yes, Your Honor.

21 THE COURT: Why don't we pick a time period of
22 July 5, 2009, and let's expand it six months backward, please,
23 time period and we may as well advance it six months past it
24 as well. So the year surrounding July 5, 2009. I would like
25 you to inquire as to whether there is any information, law

1 enforcement information, about the use of food containers to
2 smuggle drugs in the luggage of innocent dupes.

3 I don't mean when I say "information" whether
4 someone who got arrested says that he or she was innocent. I
5 mean, evidence or information supporting a law
6 enforcement -- supporting that view.

7 Do you understand the distinction?

8 If it gets dicey, I want you to err on the side of
9 giving it to me.

10 MR. LIFSHITZ: Yes, Your Honor.

11 THE COURT: All right?

12 MR. LIFSHITZ: Yes.

13 THE COURT: I will look at it.

14 But it seems to me if there were -- just to make a
15 point by exaggeration -- if there were 50 cases last July
16 involving food containers to smuggle drugs and there were
17 reports in DEA or ICE or whoever does this stuff that
18 supported the view that some other entity was using innocent
19 dupes, however silly that may be, however silly -- I know
20 these arguments -- however silly you may think it is to
21 entrust that value of merchandise to an innocent dupe, if
22 there is information in the law enforcement files that would
23 tend to support that argument, I want you to disclose it. And
24 if there is such information and you still think you shouldn't
25 disclose it, I want you to give it to me.

1 Understood?

2 MR. LIFSHITZ: Yes, Your Honor.

3 THE COURT: Second, any information, if there is
4 corruption among airport employees, that took the form in
5 substance of using the luggage of unwitting passengers to
6 bring into the country controlled substances.

7 The application for disclosure of information
8 relating to the incidence of opening food containers in Guyana
9 is denied.

10 The application for disclosure of the training
11 materials is denied.

12 I don't think it is sufficiently germane to the
13 prospective defense as stated to require me to grant those
14 applications.

15 If I haven't addressed your disclosure applications
16 specifically, they are denied.

17 Understood?

18 MR. SUNDARAM: Yes.

19 I do have one question --

20 THE COURT: Yes.

21 MR. SUNDARAM: -- about your ruling.

22 Now, Your Honor did mention, you know, your own
23 familiarity the -- the JFK case, which I understand was 2003,
24 2004. Our office has a case which I mentioned was a -- People
25 against Singh and that case was dismissed and I think it was

1 tangentially related and it was a case where there was
2 misplaced luggage from that case involved baggage handler
3 corruption.

4 Is Your Honor's ruling that even if we had -- even
5 if we were able to get information from that file, that's too
6 remote? Is that the -- because it's --

7 THE COURT: I haven't ruled on the remoteness of
8 what information you get from that file. I have simply denied
9 your requests to the extent I haven't granted them.

10 MR. SUNDARAM: I understand.

11 That would include our request for -- since we
12 mentioned that case in particular, because it's the one that
13 we are aware of, for information --

14 THE COURT: What is it you want from that file that
15 you don't have? What do you want from the file of that case
16 that you don't have?

17 This is a fellow who was a codefendant of DeFreitas
18 or something like that?

19 MR. SUNDARAM: No.

20 THE COURT: What is it?

21 MR. SUNDARAM: This is a person who was prosecuted
22 the same time as Weatherly and Adams.

23 THE COURT: Singh is the 2003 case?

24 MR. SUNDARAM: Yes.

25 THE COURT: I've got it.

1 MR. SUNDARAM: And based on what you asked the
2 government to turn over, if it exists, in the 2009 timeframe,
3 we believe that exculpatory information would be in the Singh
4 file which may not have been disclosed to us because I don't
5 think -- that case didn't get to --

6 THE COURT: That's the 2003 case?

7 MR. SUNDARAM: That was dismissed.

8 THE COURT: Yes. I have denied that.

9 We have a Monday trial date. So you have to move
10 quickly.

11 MR. LIFSHITZ: Yes, Your Honor.

12 THE COURT: Within your office.

13 MR. LIFSHITZ: Yes.

14 THE COURT: Ask the relevant agency or agencies.

15 All right?

16 MR. LIFSHITZ: Okay. One final question, Your
17 Honor.

18 THE COURT: Yes.

19 MR. LIFSHITZ: Are these requests that I am going to
20 make limited to instances involving Guyana, importation from
21 Guyana or from anywhere?

22 THE COURT: No. From anywhere.

23 If this turns into a rat's nest of information, we
24 will sort it out later. Let's gather, let's see what's out
25 there, if anything, first.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Okay?

MR. LIFSHITZ: Yes, Your Honor.

THE COURT: Thank you.

Have a good day.

MR. SUNDARAM: Thank you.

(Matter concludes.)